

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

AHMED G. TURAY JR.,

Petitioner,

V.

CLARK COUNTY JAIL,

Respondent.

CASE NO. 3:16-CV-05388-RBL-JRC

REPORT AND RECOMMENDATION

NOTED FOR: DECEMBER 16, 2016

The District Court referred this petition for a writ of habeas corpus to United States Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. § 636(b) (1) (A) and (B), and local Magistrate Judge Rules MJR3 and MJR4. Petitioner seeks relief from a state conviction pursuant to 28 U.S.C. § 2254.

Under Habeas Rule 4, the Court should dismiss a habeas petition if it plainly appears from the petition that the petitioner is not entitled to relief. Here, the Court cannot grant relief because petitioner has failed to name a proper respondent and he has failed to exhaust his remedies in state court. The Court therefore recommends that the petition be dismissed without prejudice and that the IFP application be denied as moot.

BACKGROUND

2 Petitioner originally filed this cause of action as a 42 U.S.C. § 1983 civil rights
3 complaint, but then attempted to recharacterize the case as a habeas corpus petition pursuant to
4 28 U.S.C. § 2254. *See* Dkt. 12.

5 The Court declined to serve the petition because it appeared that petitioner had not
6 exhausted his state judicial remedies. Dkt. 15. In addition, petitioner named the Clark County Jail
7 as respondent, even though petitioner is currently incarcerated at Washington Corrections Center
8 (“WCC”). Dkt. 12. Due to these deficiencies, the Court granted petitioner leave to file an
9 amended petition or explain why his petition should not be dismissed. Dkt. 15.

10 On November 18, 2016, petitioner filed an amended petition, again naming the Clark
11 County Jail as respondent. Dkt. 17. Petitioner seeks to challenge his August 31, 2016 conviction
12 in Clark County for assault, robbery and kidnapping. *Id.* On the face of his petition, petitioner
13 states that he did not appeal his conviction in state court, and has only sought review in the
14 United States District Courts. *Id.* at 2.

DISCUSSION

16 In his original petition, petitioner named the Clark County Jail as respondent. Dkt. 12.
17 The Court advised petitioner that he must name the state officer having custody of him as the
18 respondent of the petition and that person is typically the warden or superintendent of the facility
19 in which he is incarcerated or if he is on probation, his parole officer. *Rumsfeld v. Padilla*, 542
20 U.S. 426, 434-35 (2004); *Stanley v. California Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994);
21 *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996). Petitioner's failure to name the
22 correct party deprives this Court of personal jurisdiction. See *Stanley v. California Supreme*
23 *Court*, 21 F.3d 359, 360 (9th Cir. 1994).

1 Moreover, even if petitioner had named the proper respondent, the petition remains
2 subject to dismissal because petitioner has not yet exhausted his state court remedies. Under the
3 exhaustion doctrine, a federal court may not grant habeas relief to a state prisoner unless he has
4 properly presented his claims to the state courts and exhausted all state remedies. *See* 28 U.S.C.
5 § 2254(b); *Coleman v. Thompson*, 501 U.S. 722, 731 (1991). To satisfy the exhaustion
6 requirement, a petitioner must “fairly present” his claim in each appropriate state court, including
7 the highest state court with powers of discretionary review, thereby giving those courts the
8 opportunity to act on his claim. *Baldwin v. Reese*, 541 U.S. 27, 29 (2004). This has not
9 happened here because petitioner states that he has not filed a direct appeal or collateral attack on
10 his 2016 conviction in state court. Dkt. 17. It may be that on review, the state courts will grant
11 petitioner the relief he requests and make habeas intervention by this Court unnecessary. Should
12 the highest state court deny relief, petitioner should note that a § 2254 petition must be filed
13 within one year of the judgment entered in the state courts, and the failure to timely file in this
14 Court may bar relief. *See* 28 U.S.C. § 2244(d).

15 **CERTIFICATE OF APPEALABILITY**

16 A petitioner seeking post-conviction relief under 28 U.S.C. § 2254 may appeal a district
17 court’s dismissal of the federal habeas petition only after obtaining a certificate of appealability
18 (COA) from a district or circuit judge. A certificate of appealability may issue only if petitioner
19 has made “a substantial showing of the denial of a constitutional right.” *See* 28 U.S.C. §
20 2253(c)(2). Petitioner satisfies this standard “by demonstrating that jurists of reason could
21 disagree with the district court’s resolution of his constitutional claims or that jurists could
22 conclude the issues presented are adequate to deserve encouragement to proceed further.”
23 *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (*citing Slack v. McDaniel*, 529 U.S. 473, 484
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1 (2000)). Pursuant to this standard, this Court concludes that petitioner is not entitled to a
2 certificate of appealability with respect to this petition.

3 **CONCLUSION**

4 Because petitioner has failed to name a proper respondent and exhaust his remedies in
5 state court before the filing of this petition for writ of habeas corpus, the Court recommends that
6 the petition (Dkt. 17) be dismissed without prejudice and the IFP application be denied as moot
7 (Dkt. 16). The Court also recommends denying issuance of a certificate of appealability.

8 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have
9 fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P.
10 6. Failure to file objections will result in a waiver of those objections for purposes of de novo
11 review by the district judge. *See* 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit
12 imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set the matter for consideration on
13 **December 16, 2016** as noted in the caption.

14 Dated this 22nd day of November, 2016.

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16 J. Richard Creatura
17 United States Magistrate Judge
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